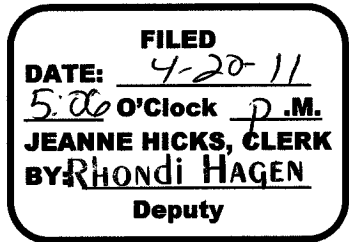


w/o

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: April 20, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney

By Sheila Polk

Bill Hughes

(Via OnBase)

(Plaintiff)

(For Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly

(Via Electronic Mail)

(For Defendant)

(Defendant)

and

Luis Li/Brad Brian/Truc Do/Miriam Seifter

MUNGER TOLLES & OLSON LLP

(Via Electronic Mail)

(For Defendant *Pro Hac Vice*)

HEARING ON:
TRIAL – Day 32

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

START TIME: 8:49 a.m.

APPEARANCES:

Sheila Polk, Counsel for State

Bill Hughes, Co-Counsel for State

Detective Ross Diskin, Case Agent

James Arthur Ray, Defendant

Tom Kelly, Counsel for Defendant

Luis Li, *Pro Hac Vice* Counsel For Defendant

Truc Do, *Pro Hac Vice* Counsel For Defendant

Miriam Seifter, *Pro Hac Vice* Counsel For Defendant

The Jury is not present.

The Court and Counsel address preliminary matters as follows:

Counsel for the State received a copy of **Defendant's Bench Memorandum** regarding Angel Valley Unrelated Business Taxable Income and argues that the issues contained therein have already been addressed by the Court. Both Counsel address the Court regarding the State's position. The Court states that in regards to Ms. Mercer, the Court does not see why there would be questioning in that area and further advises the Court will review the Bench Memorandum over the noon recess. Further discussion ensues.

In regards to the **civil lawsuits issue**, the Court will issue a written ruling but in the interim advises Counsel that the Court **finds** the fact of settlement would not be admissible.

In regards to the **Hamiltons issue**, the Court **finds** that the State's basis for argument of admissibility was dealt with at the Rule 404(b) hearing and it is not an appropriate basis for admissibility. Further discussion ensues.

In regards to the **Haddow issue**, Counsel address the Court regarding the interview of Mr. Haddow and statements made therein. The Court will review the pleadings filed.

Counsel for Defendant addresses the Court stating that **prior sweat lodge incidents or comparison sweat lodges** should not be admitted at this Trial and regarding cross examination of Ms. Mercer. Discussion ensues. The Court states there is a distinction made regarding Mr. Mercer's testimony and not talking about other sweat lodges Defendant was not involved in. The Court does not believe it necessary to have additional prior sweat lodge testimony offered for the purpose it has been offered by three witnesses although a rebuttal issue may arise. Further discussion ensues. The Court acknowledges that Defense Counsel has made his record.

~~~Recess~~~

At 9:28 a.m. the Trial resumes with all previously appearing parties and the Jury present.

Debra Jean Mercer, previously sworn, resumes the witness stand and testifies.

Exhibits 891, 892 and 893 are admitted into evidence without objection.

The Court and Counsel conduct a sidebar discussion out of the presence of the Jury on the record.

At 10:42 a.m. the Jury and the witness are admonished, excused for a recess and exit the courtroom.

The Court and Counsel discuss the objection made by Counsel for Defendant. The Court notes that objections were sustained when the witness tried to interpret what something meant. It was the Court's understanding that testimony regarding prior sweat lodges had been completed. Discussion ensues regarding State's form of questions involving the word breathing.

~~~Recess~~~

At 11:07 a.m. the Trial reconvenes with all previously appearing parties and the Jury present.

Debra Jean Mercer resumes the witness stand and testifies further.

The Jury and the witness are admonished, excused for the noon recess and leave the courtroom.

The Court and Counsel discuss the objection made by Counsel for State. The Court directs that it is not appropriate to call a witness without knowledge to convey statements of fact. The Court further states that there cannot be an assertion that the issue is a fact. Following discussion regarding Mr. Haddow, the Court states that Defense may ask questions concerning aspects of the sweat lodge construction without asserting that an expert has opined as to deficiencies.

~~~Noon Recess~~~

At 1:34 p.m. the Trial reconvenes with all previously appearing parties and the Jury present.

Debra Jean Mercer resumes the witness stand and testifies further.

Portions of un-admitted Exhibit 630 (Clips 2 and 3) are played for the Jury with the avowal of Defense Counsel that the played portions will be submitted for marking as Exhibit 895.

The Court and Counsel conduct a sidebar discussion out of the presence of the Jury on the record.

A portion of Exhibit 672 (Clip 1) is played for the Jury which shall be submitted by Defense Counsel as part of Exhibit 895.

The Jury and witness are admonished, excused for a recess and leave the courtroom.

~~~Recess~~~

At 3:25 p.m. the Trial reconvenes with all previously appearing parties and the Jury present.

Debra Jean Mercer resumes the witness stand and testifies further.

Exhibit 677 is offered by Counsel for State. There being an objection by Counsel for Defendant as to admitting the exhibit in its entirety, IT IS ORDERED that Defense may play the clip. Exhibit 677 is not admitted at this time.

Exhibit 793 is offered and admitted into evidence without objection.

The Jury and the witness are admonished, excused for the day and exit the courtroom.

The Court directs the Clerk to mark three documents as Exhibits 896, 897 and 898 and orders those three exhibits admitted for the April 13, 2011 proceeding.

Discussion ensues regarding the submitted Exhibit 895 and playing clips.

The Court stands adjourned for the day.

END TIME: 5:06 p.m.

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)
Stone & Magnanini, Co-Counsel Brown Family (e)
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)
Step toe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)
Division PTB (e)
Victim Services (e)
Court Administration
Customer Service Supervisor, Verde
Exhibit Clerk, Verde